

THE MORAN CORP.

IBLA 86-1605, etc.

Decided March 31, 1988

Appeals from separate decisions of the New Mexico State Office, Bureau of Land Management, rejecting future interest oil and gas lease offers. NM-A 60628 (TX), etc.

Reversed and remanded.

1. Oil and Gas Leases: Future and Fractional Interest Leases

Issuance of a future interest lease pursuant to sec. 5 of the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. | 354 (1982), is authorized where an application is filed by a party holding all or substantially all of the present operating rights to the mineral deposits title to which will subsequently become vested in the United States. Continuity of the term of the leasehold interest is the objective of the regulations implementing this requirement, and a decision rejecting an application for failure to control substantially all of the present operating rights may be reversed where appellant has shown that its interest in the operating rights was for all practical purposes coextensive with the duration of the reserved mineral rights.

APPEARANCES: Charles E. Shaver, Esq., Houston, Texas, and James W. McDade, Esq., Washington, D.C., for appellant; John R. Brown, Vice President - Land, for Beard Oil Company, intervenor.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Moran Corporation has filed appeals from separate decisions of the New Mexico State Office, Bureau of Land Management (BLM), rejecting future interest oil and gas lease offers filed for certain tracts of acquired land in the Sam Houston National Forest, situated in San Jacinto County and

Walker County, Texas. 1/

These offers, all filed prior to the time the interest in the oil and gas deposits under the land vested in the United States under the terms of the deed by which the United States acquired title to the lands, were rejected on the basis that appellant did not have title to all or substantially all of the operating rights in the oil and gas at the time title vested in the United States. BLM found appellant was not entitled to a future interest lease under the regulation at 43 CFR 3111.3-1(c) because, in the absence of production, its private oil and gas leases expired on December 31, 1984, one day prior to the expiration of the mineral reservation on January 1, 1985. The BLM decisions also held appellant's lease offers could not be considered as over-the-counter applications for noncompetitive leases because they were prematurely filed for the present interest which did not vest in the United States until January 2, 1985.

Beard Oil Company has filed noncompetitive oil and gas lease offers subsequent to the vesting of the mineral interest in the United States which conflict with two of appellant's future interest lease offers. In view of the potential adverse affect upon Beard's offers, its motion to intervene in this appeal was granted by order of July 10, 1987.

Appellant argues in the statement of reasons for appeal that qualified offerors for future interest leases are entitled to a statutory preference right to such a lease. It contends equity supports issuance of future interest leases since it has expended "considerable money in exploratory work and drilling over the past fifteen years in seeking production in the Sam Houston National Forest." Further, appellant argues the only statutory or regulatory requirement an offeror must meet is ownership of the operating rights in the land at the time the offer is filed. Finally, appellant contends that under the terms of Texas law governing the deed by which the United States acquired title to the lands, the mineral reservation expired (and the minerals vested in the United States) at the time appellant's lease from the private party expired, i.e., that there was no gap in ownership of the oil and gas rights.

Intervenor contends in its answer that under Texas law the mineral reservation expired at midnight on January 1, 1985, and the minerals vested in the United States on January 2, 1985. It argues that under the regulation at 43 CFR 3111.3(b), the holder of present operating rights must

1/ The future interest lease offers and the docket numbers of the corresponding appeals are:

NM-A 60628 (TX)	IBLA 86-1605
NM-A 60629 (TX)	IBLA 86-1606
NM-A 59058 (TX)	IBLA 86-1629
NM-A 59294 (TX)	IBLA 87-39

These cases were consolidated by order of the Board dated July 10, 1987, in view of the fact they present a common issue arising from a related factual context.

be the owner of such rights at the time title to the minerals vests in the United States. As appellant's lease expired on December 31, 1984, intervenor argues it is not qualified to receive a future interest lease. Further, intervenor asserts that there is no statutory preference right to a future interest lease once mineral title has vested in the United States. It contends that the intent of the statutory provision authorizing future interest leasing was to facilitate development during the period prior to vesting of title in the United States and that once mineral title is vested, issuing a lease to a future interest applicant is not in the public interest.

The lands embraced in appellant's lease offers were conveyed to the United States by deed dated December 27, 1935, from J. M. Bernadin, Trustee, subject to the following reservation:

There is hereby excepted, reserved and retained by the said Trustee unto himself his successors and assigns, all oil, gas, sulphur and other minerals on, in, under and that may be produced from the land herein conveyed and the above described, for a period beginning with the date hereof and ending January 1, 1985, and if on that date oil, gas, sulphur, or other minerals are being produced in paying quantities, then and in that event reservations shall be extended to an area of one square mile of which the well is the center, of each then existing oil, gas, sulphur, or other mineral operation and such extension shall cover a five year period from January 1, 1985, and if on the date of such extension period or any subsequent extension paying operations are being carried on, on the premises, then oil, gas, sulphur and other mineral reservations shall be extended by an additional five year period \* \* \*.

The lease applications were filed with BLM by appellant's predecessor in interest 2/ from June through November 1984, and were accompanied by a copy of an oil and gas lease from the holder of the reserved mineral interest which by its terms expired December 31, 1984, in the absence of production.

[1] Issuance of future interest leases for mineral deposits in acquired lands in which the United States will become vested with the mineral rights in the future is authorized by section 5 of the Mineral Leasing Act for Acquired Lands of August 7, 1947:

Where the United States does not own all of the mineral deposits under any lands sought to be leased and which are affected by this chapter, the Secretary is authorized to lease the interest of the United States in any such mineral deposits

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2/ The lease applications were filed in the name of the Glen Rose Corporation as offeror. Subsequently, appellant submitted evidence of a change in the name of the corporate offeror to The Moran Corporation. This name change was recognized by BLM decision of Apr. 17, 1986.

when, in the judgment of the Secretary, the public interest will be best served thereby; subject, however, to the provisions of section 352 of this title. Where the United States does not own any interest or owns less than a full interest in the minerals that may be produced from any lands sought to be leased, and which are or will be affected by this chapter and where, under the provisions of its acquisition, the United States is to acquire all or any part of such mineral deposits in the future, the Secretary may lease any interest of the United States then owned or to be acquired in the future in the same manner as provided in the preceding sentence.

30 U.S.C. § 354 (1982). The regulations promulgated pursuant to this provision state that a noncompetitive future interest oil and gas lease shall be issued only to an offeror who owns "all or substantially all of the present operating rights in the lands." 43 CFR 3111.3-1(b). Thus, the Department has recognized that a leasehold should have continuity of term notwithstanding the identity of the lessor might change. Fritz, Mineral Problems Relating to Acquired Federal Lands, 3 Rocky Mt. Min. L. Inst. 379, 385 (1957); see Placid Oil Co., 9 IBLA 384, 80 I.D. 212 (1973).

Appellant's lease offers were rejected by BLM because the mineral interest was held to have vested in the United States (upon expiration of the reservation in the acquisition deed) the day after expiration of the lease under which appellant held the operating rights to the reserved mineral interest. Consequently, a considerable amount of attention has been given by appellant and intervenor to the question of when the reservation in the acquisition deed terminated under Texas law, i.e., whether the mineral title vested in the United States on January 1, 1985 (upon expiration of appellant's private lease) or a day later on January 2, 1985. We find it unnecessary to resolve this question. The issue under the statute and regulation is whether the future interest offeror is the owner of all or substantially all of the operating rights in the lands at the time the offer is filed. As the continuity of the leasehold interest is the objective, it would clearly be inappropriate to issue a future interest lease to a party whose interest in the reserved mineral estate would be superseded by a successor in interest prior to vesting of title in the United States. However, we are not faced with that situation in the context of the present appeals. Appellant's leasehold interest was clearly designed to be coextensive with the reserved mineral interest and it is simply unrealistic to reject the offers on the ground the operating rights were vested in a third party for a 24-hour interval, especially in the absence of any assertion of interest by such a third party. Cf. Mrs. Laurel D. Barry, A-30431 (Dec. 17, 1965) (reversing cancellation of a future interest lease issued to the owner of the reserved mineral interest who had previously leased the operating rights to a third party). We conclude that appellant qualifies for a future interest lease as the holder of all or substantially all of the present operating rights in the tracts and we must reverse the BLM finding to the contrary.

Although, as appellant acknowledges, the former regulations required that a future interest lease offer be filed more than a year in advance of the vesting of the mineral estate in the United States and required rejection of future interest offers where a lease had not issued prior to the vesting of the mineral estate, 3/ such is no longer the case. The current regulation at 43 CFR 3111.3-1(c) provides that:

An offer \* \* \* for a future interest lease may be filed at any time prior to the date of vesting in the United States of the present interest in the minerals. Upon the vesting in the United States of the present possessory interest in the minerals, all such offers for future interest leases pending at the time shall be considered for lease, retaining priority for consideration as of the original date of filing; and thereafter only offers for present interest shall be considered; or at the Director's discretion, such offers may be included as a simultaneous filing for such lands under Subpart 3112 of this title.

Accordingly, under the terms of the regulations, appellant's future interest lease offers are now entitled to further adjudication for leasing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the cases are remanded for further action consistent with this opinion.

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C. Randall Grant, Jr.  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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Anita Vogt  
Administrative Judge

Alternate Member

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3/ See 43 CFR 3150.4-5(a) (1982). This regulation provided in part that: "Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at that time will automatically lapse and thereafter only offers for a present interest lease will be considered."